

# ARTICLE 6

## Zoning Code Administration

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## CHAPTER 17.600 ADMINISTRATIVE RESPONSIBILITY

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### Sections:

- 17.600.005 - Purpose
- 17.600.010 - City Council
- 17.600.015 - Planning Commission
- 17.600.020 - Design Review Board
- 17.600.025 - Community Development Director

### 17.600.005 Purpose

This Chapter defines the authority and responsibilities of City staff and official review/authority bodies in the administration of this Title.

### 17.600.010 City Council

The Council shall perform the duties and functions prescribed in this Title, which include:

- A. Review Authority on Specified Planning Matters.** Final decisions on Development Agreements, General Plan Amendments, Specific Plans, Zoning Map/Code Amendments, Planned Developments, Comprehensive Plans, and other applicable environmental documents, policy, or ordinance matters related to the City's planning process; and
- B. Appeals.** The review of any appeal filed from a decision by the Commission or Director.

The functions listed above shall be performed in compliance with Section 17.500.010, *Authority for Land Use and Zoning Decisions*, Table 5-1, *Review Authority*, and the California Environmental Quality Act (CEQA).

### 17.600.015 Planning Commission

- A. Appointment.** The Commission shall be appointed and serve in compliance with Chapter 2.44, Planning Commission, of the WMC.
- B. Duties and Authority.** The Commission shall perform the duties and functions prescribed by Section 2.44.040, *Powers and Duties Generally*, of Chapter 2.44 of the WMC and this Title, including:
  1. The review and final decision on development projects and related environmental documents; and
  2. Matters forwarded to the Commission from the Director regarding interpretation of zoning code provisions; and
  3. The recommendation, to the Council for final decisions, on Development Agreements, General Plan Amendments, Specific Plans, Zoning Map/Code Amendments, Planned Developments, Comprehensive Plans, and other applicable environmental documents, policy, or ordinance matters related to the City's planning process.

The functions listed above shall be performed in compliance with Section 17.500.010, *Authority for Land Use and Zoning Decisions*, Table 5-1, *Review Authority*, and CEQA.

### **17.600.020 Design Review Board**

- A. Appointment.** Design review board membership shall be established by resolution of the Council.
- B. Duties and Authority.** Recommend to the approving authority approval, the conditional approval or denial of a project design for:
  - 1. **Residential.** The construction of a new residential project of 7 or more units or the addition to an existing residential project that would result in 7 or more units, or the demolition of one or more historic structure.
  - 2. **Nonresidential.** Construction of a new building of 10,000 gross square feet of floor area or more, or the addition of 10,000 gross square feet or more to an existing building within a one-year period; exterior architectural modifications, including change in color or materials to a 10,000-gross-square-foot or larger building; wireless communication facilities not screened or designed as “stealth” facilities”, demolition of historic structures; or redevelopment of a historic structure.
  - 3. **Referral.** Any project that is referred to the Board by an approval authority.

The functions listed above shall be performed in compliance with Section 17.500.010, *Authority for Land Use and Zoning Decisions*, Table 5-1, *Review Authority*, and CEQA.

### **17.600.025 Community Development Director**

- A. Duties and Authority.** The Director:
  - 1. Shall have the responsibility to perform all of the functions designated by state law.
  - 2. Shall perform the duties and functions prescribed in this Title, including the review of any Level I Development Review and administrative adjustments in compliance with Section 17.500.010, *Authority for Land Use and Zoning Decisions*, Table 5-1, *Review Authority*, and CEQA.
  - 3. Shall perform other responsibilities assigned by the Council.
- B. Delegation and Supervision.** The Director may delegate his/her responsibilities to assigned City staff under the supervision of the Director. When the Director designates a City staff person, that staff person shall perform the duties assigned by the Director in addition to those listed in Section 17.600.025.A, as appropriate to the personnel title of the designee.

## CHAPTER 17.610 NONCONFORMING USES, STRUCTURES, AND PARCELS

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### Sections:

- 17.610.005 - Purpose
- 17.610.010 - Nonconforming Uses
- 17.610.015 - Nonconforming Structures
- 17.610.020 - Destruction – Commercial and Industrial Buildings
- 17.610.025 - Destruction – Residential Developments
- 17.610.030 - Maintenance and Repair
- 17.610.035 - Nonconforming Parcels
- 17.610.040 - Amortization
- 17.610.045 - Unlawful Uses and Structures
- 17.610.050 - Nuisance Abatement

### 17.610.005 Purpose

This Chapter establishes regulations for legal nonconforming land uses, structures, and parcels. These are land uses, structures, and parcels within the City that were lawfully established, constructed, or subdivided prior to the adoption or amendment of the WMC, but which would be prohibited, regulated, or restricted differently under the current terms of the WMC or future amendments thereto.

It is the intent of this Chapter to encourage the continuing improvement of the City by limiting the extent to which nonconforming structures and uses may continue to be used, expanded, or replaced, while allowing for improvements in their appearance.

### 17.610.010 Nonconforming Uses

- A. Continuation of Use.** Any nonconforming use may be maintained and continued provided that there is no increase or enlargement of the area, space, or volume occupied by or devoted to the nonconforming use. Alterations that do not increase or enlarge a nonconforming use may be approved, provided, however, that work done in any period of 12 months on ordinary structural alterations or replacement of walls, fixtures, or plumbing not exceeding 25 percent of the appraised market value of the building for the calendar year in which such work is done, as it existed at the time this title or amendments thereto takes effect.
- B. Abandonment or Discontinuance of Use.** A nonconforming use that has been abandoned or discontinued for a period of one year shall not be reestablished and any subsequent reuse or any new use established shall conform to the current provisions of this Title.
- C. Change of Use.** A nonconforming use that is changed to or replaced by a conforming use shall result in termination and subsequent abandonment of the nonconforming use.
- D. Change to Other Nonconforming Use.** A nonconforming use may be changed to another nonconforming use of the same or more restricted classification, provided the change occurs within one year from the date the existing use is abandoned or discontinued (See B above).

**E. Use Permits**

1. ***Conformity of uses requiring Administrative and Conditional Use Permits.*** Any use existing at the time of adoption of this Title in a zoning district that allows the use subject to the granting of an Administrative or Conditional Use Permit, shall be deemed a legal nonconforming use and may only continue to the same extent that it previously existed.
2. ***Previous Administrative or Conditional Use Permits in effect.*** A use that was established with an Administrative or a Conditional Use Permit but is no longer a use allowed by this Title within the applicable zoning district may continue in compliance with the provisions and terms of the original permit. If the Administrative or Conditional Use Permit specified a termination date, then the use shall terminate in compliance with the original permit.

- F. Cafes, Coffeehouses and Tea Houses.** Any existing café, coffeehouse or tea house which does not comply with the minimum requirements for such establishments as set forth in Section 17.400.030, *Cafes, Coffeehouses, and Tea houses*, shall be considered nonconforming and shall be brought into compliance with such minimum requirements within six months from the date the ordinance establishing said minimum requirements became effective.

**17.610.015 Nonconforming Structures**

- A. Alterations or Additions.** When any nonconformity is eliminated or brought into conformance with the current regulations, the nonconforming rights and privileges with respect to that nonconformity are terminated and shall not be restored. The construction, enlargement, expansion, extension, remodeling or reconstruction of a nonconforming structure shall be subject to:

1. The work shall be allowed provided new additions, replacement structures or alterations shall not increase existing nonconformities (e.g., the new construction will comply with required setbacks even though the existing building does not conform with current minimum required setbacks) subject to the following provisions:
  - a. ***Alterations.*** Remodeling, changes to interior partitions or structural elements and repairs may be made to a legal nonconforming structure, provided that the cost of the desired improvement or repair shall not exceed 25 percent of replacement cost of the nonconforming structure, as determined by the Director, or over any consecutive 12-month period.
  - b. ***Additions.*** An increase of up to 25 percent of the original gross floor area within any 12-month period.
  - c. Whenever alterations exceed 10 percent of the replacement cost of the nonconforming structure or the nonconforming structure is enlarged by more than 10 of its original gross floor area, the Director shall not approve the application unless the following requirements are met:
    - i. All roof equipment screening shall be provide in compliance with Section 17.300.035, *Screening*.

- ii. All trash enclosures shall be provided in compliance with this Title.
- iii. All fences, walls, and hedges shall comply with Section 17.300.030, *Fences, Hedges, and Walls*.
- iv. Code required landscaping is provided for the entire site.
- d. Whenever alterations are less than 10 percent of the replacement cost of the nonconforming structure but more than five percent or the nonconforming structure is enlarged by less than 10 percent of its original gross floor area but more than five percent, the Director shall not approve the application unless the following requirements are met:
  - i. Landscaping shall be upgraded to comply with current code to the maximum extent possible without decreasing the number of required parking spaces or conflicting with other parking standards.

**B. Nonconforming Due to Parking.** A structure that is nonconforming due to the lack of compliance with off-street parking standards may undergo changes in compliance with this section, subject to the following provisions:

1. ***Residential additions.*** Full compliance with the provisions of Chapter 17.320, *Off-Street Parking and Loading*, shall not be required for additions provided that:
  - a. Single-Family<sup>1</sup>. The dwelling is not increased cumulatively by 25 percent or more of its original gross floor area. If the existing garage is at least 18 feet by 19 feet (interior dimensions), then it is not considered nonconforming.
  - b. Multiple-Family. The addition will not result in:
    - i. An increase in the number of dwelling units.
    - ii. The elimination of the only portion of the parcel that can be used for the required/existing vehicle parking or access.
    - iii. A cumulative total of more than 4 bedrooms, as defined in Article 7 *Definitions*, within any unit.
2. ***Nonresidential structures and uses.*** Structures with parking standard deficiencies shall be allowed to remodel, alter, expand or accommodate a change of use, provided that:
  - a. The expansion or new use has the same or lesser parking requirement as the existing or previous use or structure.
  - b. The expansion or new use has a greater parking requirement than the existing or previous use or structure and a sufficient number of additional parking spaces have been provided to accommodate the net increase of required spaces in the following manner:

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1. An addition resulting in 5 or more bedrooms, as defined in Article 7, *Definitions*, shall require additional parking as specified in Section 17.32.020, *Number of Parking Spaces Required*.

- i. The net new parking spaces shall equal the number of spaces directly required by the change in use only.
- ii. The number of additional parking spaces shall equal the number of spaces directly required by the expansion area only.
- iii. Where there are 2 or more nonconforming structures on a site, but not all structures are proposed for additions, changes, or intensifications, parking nonconformities for the structures not proposed for additions, changes, or intensifications may remain as they are.
- iv. If the expansion is more than 10 percent of its original gross floor area or on-site uses maybe intensified such that code required parking would increase by more than 10 percent in any 12-month period, or alterations including remodeling exceed 25 percent of the replacement cost of the nonconforming structure, the entire site ore development (regardless of number of conforming and nonconforming structures on site) shall conform to current parking standards.

#### **17.610.020 Destruction – Commercial and Industrial Buildings**

If, at any time, a commercial or industrial building in existence or maintained at the time this title or amendments thereto takes effect that does not conform to the regulations for the district in which it is located is destroyed by fire, explosion, act of God, or act of public enemy, voluntarily razed or required by law to be razed to the extent of more than fifty percent of the full appraised market value thereof for the calendar year during which such destruction occurs, then, and without further action by the city council, the same building and the land on which said building was located or maintained shall, from and after the date of such destruction, be subjected to all the regulations specified by this ordinance for the district in which such land and building are located.

#### **17.610.025 Destruction – Residential Developments**

If, at any time, the residential development (as used herein, “development” may include one or more buildings containing one or more residential units) in existence or maintained at the time this title or amendments thereto take effect that does not conform to the regulations for the district in which it is located is damaged to the extent herein specified, then it shall be subject to the following provisions:

##### **A. Level of Destruction**

1. Fifty percent or less of full appraised market value of building(s) only prior to damage.

May be rebuilt to original configuration or a lesser degree of nonconformity

2. 50.01 percent or more of full appraised market value of building(s) only prior to damage:
  - a. Units may be rebuilt to original configuration or a lesser degree of nonconformity upon approval of a conditional use permit and subject to compliance with current parking and setback regulations of this title;



- b. In commercial and/or industrial districts, may not be rebuilt. Then, and without further action by the City Council, the same building and the land on which said building was located or maintained shall, from and after the date of such destruction, be subjected to all the regulations specified by this ordinance for the district in which such land and building are located.
- c. A residential structure, in any district that has been certified by a resolution of the Westminster planning commission as being a structure that is “historically significant,” may be rebuilt to its original configuration and design. The planning commission’s decision to classify a structure as “historically significant” shall be based upon evidence presented to the planning commission, which indicates that the structure has a meaningful association with a historical figure or event in the City’s history, or written recommendation from the Westminster Historical Society that the building has historical significance. The planning commission’s determination to certify a residential structure as being “historically significant” shall occur prior to the damage.

### **17.610.030 Maintenance and Repair**

- A. Maintenance and Repair.** A nonconforming structure may be continued, improved, and maintained, subject to the restrictions contained in this chapter.
- B. Seismic Retrofitting/Building Code Compliance.** Repairs or alterations required by law shall be allowed. Reconstruction required to reinforce unreinforced masonry structures or to comply with Building Code requirements shall be allowed without cost limitations. The seismic retrofitting and Building Code compliance shall be limited exclusively to compliance with earthquake safety standards and other applicable Building Code requirements, including state law (such as Title 24 and the California Code of Regulations).

### **17.610.035 Nonconforming Parcels**

A nonconforming parcel of record that does not comply with the access, area, or width requirements of this Title for the zoning district in which it is located, shall be considered a legal building site if it meets at least one of the criteria specified by this Section.

- A. Applicability.** It shall be the responsibility of the applicant to produce sufficient evidence to establish the applicability of one or more of the following:
  - 1. ***Approved subdivision.*** The parcel was created through a subdivision approved by the City or prior to incorporation by the County of Orange.
  - 2. ***Variance or lot line adjustment.*** The parcel was approved through the variance procedures outlined in Chapters 17.550, *Administrative and Conditional Use Permits*, and 17.555, *Administrative Adjustments and Variances*, or resulted from a lot line adjustment.
  - 3. ***Partial government acquisition.*** The parcel was created in compliance with the provisions of this Title, but was made nonconforming when a portion of the parcel was acquired by a governmental entity.

- B. Further Division or Reduction of Parcel Prohibited.** Where structures have been erected on a nonconforming parcel, the area where structures are located shall not be later divided so as to reduce the building site area, lot depth, and/or frontage below the requirements of the applicable zoning district or other applicable provisions of this Title, or in a way that makes the use of the parcel more nonconforming.

#### **17.610.040 Amortization**

The Zoning Code gives the City Council the authority to establish Amortization Regulations for nonconforming uses or structures.

#### **17.610.045 Unlawful Uses and Structures**

Any use or structure that did not comply with the applicable provisions of this Title or prior planning and zoning regulations when established are violations of this Title and are subject to the provisions of Chapter 17.650, *Enforcement*. This chapter does not grant any right to continue occupancy of property containing an illegal or unpermitted use or structure. The activity shall not be allowed to continue unless/until permits and entitlements required by this Title and the WMC are first obtained.

#### **17.610.050 Public Nuisance Abatement**

In the event that a nonconforming use or structure is found to constitute a public nuisance, appropriate action shall be taken by the Director in compliance with Chapter 8.20, *Nuisances*, of the WMC.

## CHAPTER 17.620 GENERAL PLAN, ZONING MAP AND ZONING CODE AMENDMENTS

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### Sections:

- 17.620.005 - Purpose
- 17.620.010 - Initiation of Amendments
- 17.620.015 - Application Filing, Processing, and Review
- 17.620.020 - Commission Action on Amendments
- 17.620.025 - Council Action on Amendments
- 17.620.030 - Findings
- 17.620.035 - Prezoning

### 17.620.005 Purpose

This Chapter provides procedures for the amendment of the General Plan, the Zoning Map, and this Title. A General Plan Amendment may include revisions to strategies, goals, land use designations, policies, or text. Zoning Map amendments have the effect of rezoning property from one zoning district to another. Amendments to this Title may modify any procedure, provision, requirement, or standard applicable to the development or use of property within the City.

### 17.620.010 Initiation of Amendments

An amendment may be initiated by the:

- A. **Council.** A resolution of intention initiated by the Council.
- B. **Commission.** A resolution of intention by the Commission.
- C. **Property Owner.** An application from a property owner.

### 17.620.015 Application Filing, Processing, and Review

- A. **Filing.** An application for an amendment shall be completed, filed, and processed in compliance with Chapter 17.500, *Applications, Processing, and Fees*. The application package shall include all information specified in the application, any applicable Division handout, and any additional information required by the Director in order to conduct a thorough review of the proposed project. It is the responsibility of the applicant to establish evidence in support of the findings required by Section 17.620.030, *Findings*.
- B. **Notice and Hearings.** Notice and hearings regarding an application for an amendment shall be provided in compliance with Chapter 17.630, *Public Hearings and Administrative Review*.

### 17.620.020 Commission Action on Amendments

The Commission shall make a written recommendation to the Council whether to approve, approve in modified form, or disapprove the proposed amendment based on the findings contained in Section 17.620.030, *Findings*.

**17.620.025 Council Action on Amendments**

Upon receipt of the Commission's recommendation, the Council shall approve, approve in modified form, or disapprove the proposed amendment based on the findings contained in Section 17.620.030, *Findings*.

If the Council proposes to adopt a substantial modification to the amendment not previously considered by the Commission during its hearings, the proposed modification may first be referred back to the Commission for its recommendation.

**17.620.030 Findings**

An amendment to the General Plan, the Zoning Map, or this Title may be approved only if all of the following findings can be made in a positive manner, as applicable to the type of amendment. It is the responsibility of the applicant to establish evidence in support of the required findings.

**A. Mandatory Findings Required for All Amendments:**

1. The proposed amendment ensures and maintains internal consistency with the goals, policies, and strategies of all elements of the General Plan and will not create any inconsistencies with this Title, in the case of a Zoning Code amendment;
2. The proposed amendment would not be detrimental to the public interest, health, safety, convenience, or welfare of the City; and
3. The proposed amendment is in compliance with the provisions of CEQA.

**B. Additional Finding for Zoning Map Amendments:** The site(s) is physically suitable (including access, provision of utilities, compatibility with adjoining land uses, and absence of physical constraints) for the requested zoning designation(s) and anticipated land use development.**17.620.035 Prezoning****A. Purpose.** An unincorporated property within the City's sphere of influence may be prezoned for the purpose of determining the zoning that will apply to the property in the event of subsequent annexation to the City. The initiation and the procedures for the prezoning shall be the same procedures that govern the rezoning of property within the City.

Upon the effective date of annexation of property that has been prezoned in compliance with this section, the zoning designation shall become the official zoning designation for the property and shall be so designated on the City's Official Zoning Map.

**B. Commission Action on Prezoning.** The Commission shall make a written recommendation to the Council whether to approve, approve in modified form, or disapprove the proposed prezoning based on the findings contained in Section 17.620.035.D.**C. Council Action on Prezoning.** Upon receipt of the Commission's recommendation, the Council shall approve, approve in modified form, or disapprove the proposed prezoning based on the findings contained in Section 17.620.035.D.

If the Council proposes to adopt a substantial modification to the prezoning not previously considered by the Commission during its hearings, the proposed modification may first be referred back to the Commission for its recommendation.

**D. Findings for Prezoning.** A prezoning may only be approved if all of the following findings can be made:

1. The proposed prezoning is consistent with the goals, policies, and strategies of the General Plan;
2. The proposed prezoning would not be detrimental to the public interest, health, safety, convenience or welfare of the City; and
3. The site is physically suitable (including access, provision of utilities, compatibility with adjoining land uses and absence of physical constraints) for the requested/anticipated land use development(s).

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## **CHAPTER 17.630 PUBLIC HEARINGS AND ADMINISTRATIVE REVIEW**

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### **Sections:**

- 17.630.005 - Purpose
- 17.630.010 - Notice of Public Hearings and Administrative Review
- 17.630.015 - Notice of Decision by Director
- 17.630.020 - Notice of Decision by Commission
- 17.630.025 - Finality of Decision by Director or Commission
- 17.630.030 - Recommendation by Commission
- 17.630.035 - Notice of Decision by Council
- 17.630.040 - Mailing of the Notice of Decision

### **17.630.005 Purpose**

This chapter provides procedures for public hearings before the Commission and Council and for administrative review by the Director. When a public hearing is required by this Title, public notice shall be given and the hearing shall be conducted as provided by this Chapter.

### **17.630.010 Notice of Public Hearings and Administrative Review**

Table 6-1, *Mandatory Public Hearings or Public Reviews before the Commission or Council*, identifies the noticing requirements for public hearings or reviews before the Commission or Council. The Director has the discretion on a case-by-case basis to require noticing for level 1 Development Review applications based on criteria including traffic, parking demand, building shade and shadow, noise, and other potential impacts.

**Table 6-1**  
**Mandatory Public Hearings or Public Review**  
**before the Commission or Council**

<i>Deadline</i>	<i>Type of Notice Required</i>		
	<i>Mailed Notice</i>	<i>Published Notice</i>	<i>Posted Notice</i>
	<i>10 days before the date of the public hearing or review</i>	<i>10 days before the date of the public hearing or review</i>	<i>10 days before the date of the public hearing or review</i>
<b>Type of Discretionary Review Application:</b>			
Comprehensive Plan	✓	✓	✓
Conditional Use Permit (CUP)	✓	NA	✓
General Plan Amendment:			
Land Use Plan Change	✓	✓	✓
Text Amendment	NA	✓	NA
Development Review – Level 2	NA	NA	NA
Development Review – Level 3	✓	NA	✓
Specific Plan	✓	✓	✓
Subdivisions (WMC, Title 16)	✓	NA	✓
Variance	✓	NA	✓
Zoning Code/Map Amendment:			
Map Change	✓	✓	NA
Text Amendment	NA	✓	NA
✓ = Required; NA = Not Applicable			

**A. Mailed Notice.** Written notices for public hearings identified in Table 6-1 and scheduled for the Commission or Council shall be given in the following manner:

1. Notices shall be mailed, postage prepaid, to the following:
  - a. The applicant, occupants, and owner(s), or their agents, of the property being considered.
  - b. The owners and occupants of all property within a radius of 500 feet of the exterior boundaries of the property or the perimeters of the premises of the proposed use involved in the application. This subsection establishes the minimum mailed notice requirements and shall not preclude the provision of notice to a greater number of persons.
  - c. Each local agency expected to provide water, schools, or other essential public facilities or services to the project, whose ability to provide the facilities and services may be significantly affected.
  - d. A person who has filed a written request for notice with the Director and has paid the fee established by the most current City Council Fee Resolution for the notice.
2. Notices shall be mailed at least 10 days before the date scheduled for the public hearing or review.



3. For the purposes of this notification, the last known name and address of each property owner as identified in the records of the Orange County Assessor shall be used, unless a more current source of this information is known.
4. The address of occupants shall be determined by visual site inspection or other reasonably accurate means. The occupant notice requirement can be met by mailing the notice to the occupant(s).
5. At the time of filing the application, the applicant or designee shall provide a list of property owners and occupants within the prescribed area of notification and shall sign an affidavit verifying that the list has been prepared in compliance with the requirements of this section.
6. The City shall prepare the notice, which shall clearly state:
  - a. The date, place, and time of the scheduled hearing.
  - b. The name of the hearing body.
  - c. A general explanation of the matter to be considered.
  - d. A general description, in text or by diagram, of the location of the subject property.
  - e. The manner in which additional information may be received.
  - f. Any other pertinent information deemed appropriate by the Director.
  - g. If a proposed Negative Declaration or Final Environmental Impact Report (EIR) has been prepared for the project in compliance with the City's use of the state-promulgated CEQA Guidelines, the hearing notice shall include a statement that the hearing body will also consider approval of the proposed Negative Declaration or certification of the Final EIR.
7. The Director has the discretion, on a case-by-case basis, to require the applicant to expand the mailing list beyond the minimum mailing area identified in Section 17.630.010.A.1.b, based on criteria including traffic impact, parking demand, building shade and shadow, noise corridor, cul-de-sac street, and other potential impact(s) and physical boundaries that could help delineate the impact area.
8. In the event a public hearing or review is opened but continued to a date certain by the Commission or Council, further notice is not required but may be given at the Director's discretion.
9. The failure of any person or addressee to receive a written mailed notice shall not invalidate the public hearing or review proceedings, and the Commission or the Council may continue the public hearing or review, if deemed necessary, in compliance with Section 17.630.010.A.8.

**B. Published Notice.** Published notices of public hearings or reviews identified in Table 6-1 before the Commission and the Council shall be given in the following manner:

1. **10-day notice.** A notice shall be published at least once in a local newspaper of general circulation in the City not less than 10 days before the date of the public hearing or review. The Director has the discretion to publish the notice in other newspapers.
  2. **Content of notice.** The content of the notice of a public hearing shall be provided in compliance with Section 17.630.010.A.6.a–g.
- C. Posted Notice.** In addition to the mailed notice and published notice identified in Sections 17.630.010.A and 17.630.010.B, posted notice(s) for a public hearing or review before the Commission or Council for the applications identified in Table 6-1 and concerning specific real property shall be conspicuously posted at the site to which the application pertains and locations designated by Section 1.28.010 of the WMC. Such notice shall be entitled, “Public Notice,” and the words shall be printed in letters not less than one inch in height (Ordinance 2367 [part], 2003).
- D. Notice of Administrative Use Permits and Administrative Adjustment Applications**

A notice regarding the administrative review of an Administrative Use Permit application shall indicate that a public hearing shall not be required unless requested in writing to the Director, before or upon the anticipated date of decision by the Director. Upon receipt of a written notice requesting a public hearing regarding an Administrative Use Permit application, the Director shall schedule a public hearing before the Planning Commission, subject to the provisions stated in this Chapter regarding public hearings before the Planning Commission, with the exception that the minimum mailing radius for the public hearing notice shall be the same as specified for an Administrative Use Permit, as specified in Table 6-2, *Mailed Notification Requirements for Administrative Discretionary Review Applications*.

**Table 6-2**  
**Mailed Notification Requirements for**  
**Administrative Discretionary Review Applications**

<i>Type of Administrative Review</i>	<i>Chapter Reference</i>	<i>Minimum Notice Requirement</i>	
		<i>Mailed Notice</i>	<i>Mailing Deadline</i>
Administrative Use Permits	17.550	All property owners and occupants within a 300-foot radius <sup>1</sup>	10 days before the anticipated date of the decision by Director <sup>2</sup>
Administrative Adjustments	17.550	All adjacent property owners and occupants	10 days before the anticipated date of the decision by Director

Notes:

1. For large family day care, notice shall be mailed to property owners only within 100-foot radius.
2. See Section 17.400.035 for provisions related to large family day care.

- E. Additional Notice.** In addition to the types of notices required by Sections 17.630.010.A to 17.630.010.D, the Director may provide additional notice with content or use a distribution method as the Director determines is necessary or desirable (e.g., via the Internet).
- F. Effect of Notification Requirements.** Nothing in the public-notification requirements identified in this section is intended to supersede the procedures established in this Chapter for other discretionary reviews.

**17.630.015 Notice of Decision by Director**

The Director may record the decision, refer the matter to the Commission for determination, or defer action and record the decision at a later date. The decision shall contain applicable findings, any conditions of approval, and the reporting/monitoring requirements deemed necessary to mitigate any impacts and protect the public health, safety, and general welfare of the City. The Director shall report its action to the Commission and Council within the 15-day appeal period.

**17.630.020 Notice of Decision by Commission**

The Commission may announce and record the decision at the conclusion of a scheduled hearing or defer action, take specified items under advisement, and announce and record the decision at a later date. The decision shall contain applicable findings, any conditions of approval, and the reporting/monitoring requirements deemed necessary to mitigate any impacts and protect the public health, safety, and general welfare of the City. The Director shall report the action of the Commission to the Council within the 15-day appeal period.

**17.630.025 Finality of Decision by Director or Commission**

The decision of the Director or Commission is final unless appealed in compliance with Chapter 17.640, *Appeals*.

**17.630.030 Recommendation by Commission**

At the conclusion of a public hearing on a Comprehensive Plan, Development Agreement, Specific Plan, rezoning, or a proposed amendment to the General Plan or Zoning Map/Code, the Commission shall forward a recommendation, including all required findings, to the Council for final action.

**17.630.035 Notice of Decision by Council**

For an application requiring Council approval and/or for an application that has been appealed to the City Council, the Council shall announce and record its decision at the conclusion of the public hearing. The decision shall contain the findings of the Council, any conditions of approval, and the reporting/monitoring requirements deemed necessary to mitigate impacts and protect the public health, safety, and general welfare of the City.

**17.630.040 Mailing of the Notice of Decision**

Within 10 working days after the final decision or recommendation is rendered by the appropriate review authority, a notice of the decision, recommendation, any applicable conditions of approval, and any reporting/monitoring requirements shall be mailed to the applicant at the address shown on the application. A copy of the notice shall also be sent to the property owner, if different from the applicant, and to all other persons who have filed a written request for notice.

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## CHAPTER 17.640 APPEALS

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### Sections:

- 17.640.005 - Purpose
- 17.640.010 - Commission Review
- 17.640.015 - Council Review
- 17.640.020 - Appeal by both the Council and Commission
- 17.640.025 - Appeals of Decisions
- 17.640.030 - Filing and Processing of Appeals
- 17.640.035 - Notice for Appeal Hearings
- 17.640.040 - Notice of Final Decision by Commission
- 17.640.045 - Pending Appeal

### 17.640.005 Purpose

This chapter provides procedures for:

- A. The Council's review of a decision rendered by the Commission.
- B. The Commission's review of a decision rendered by the Director.
- C. The simultaneous request for an appeal by the Council and Commission.
- D. The filing of an appeal, by other than the Council or Commission, of a decision rendered by the Director or Commission.

### 17.640.010 Commission Review

A member of the Commission may request the opportunity to discuss any decision previously rendered by the Director; however, a majority vote of the Commission is required to initiate an appeal of the decision. Once the vote to initiate an appeal is passed by a majority, the matter shall be scheduled for hearing.

### 17.640.015 Council Review

A member of the Council may initiate an appeal of any decision previously rendered by the Director or Commission; once an appeal is initiated, the matter shall be scheduled for hearing. The decision of the Council on the appeal shall be final and shall become effective upon adoption of the resolution by the Council.

### 17.640.020 Appeal by the Council and Commission

If members of the Commission and Council file an appeal from the same decision, the matter shall be scheduled for Council determination. The Council shall determine whether the appeal shall be considered, and if so, by which review authority. Once the Council determines that the appeal should be heard, the appeal shall be scheduled for hearing by the review authority designated by the Council.

**17.640.025 Appeals of Decisions**

An appeal filed by other than the Council or Commission shall be heard by the following review authorities:

- A. Director Appeals.** A decision rendered by the Director may be appealed to the Commission.
- B. Commission Appeals.** A decision rendered by the Commission may be appealed to the Council.

**17.640.030 Filing and Processing of Appeals**

- A. Timing and Form of Appeal.** Appeals shall be submitted in writing and filed with the Division or City Clerk, as applicable, within 15 days after the decision date identified in the notice of decision. Appeals addressed to the Commission shall be filed with the Division, while appeals addressed to the Council shall be filed with the City Clerk. The appeal shall specifically state the pertinent facts of the case and the basis for the appeal, as required by Section 17.640.030.C. Appeals shall be accompanied by the filing fee established by the most current City Council Fee Resolution.
- B. The number of days shall be construed as calendar days.** Time limits will extend to the following City Hall working day where the last of the specified number of days falls on a weekend, holiday, or other day when City Hall is officially closed.
- C. Report and Scheduling of Hearing.** When an appeal has been filed, the Director shall prepare a report on the matter and schedule the matter for consideration by the appropriate review authority.
- D. Required Statement and Evidence.**
  - 1. Applications for appeals shall include a general statement specifying the basis for the appeal and the specific aspect of the decision being appealed.
  - 2. Appeals shall be based upon an error in fact, dispute of findings, or inadequacy of conditions to mitigate potential impacts.
  - 3. Appeals shall be accompanied by supporting evidence substantiating the basis for the appeal.
- E. Action.** If the matter originally required a noticed public hearing, the Division or City Clerk, as applicable, shall notice the hearing in compliance with Section 17.640.035, *Notice for Appeal Hearings*. At the hearing, the review authority may consider any issue involving the matter that is the subject of the appeal, in addition to the specific grounds for the appeal.
  - 1. By resolution, the review authority may affirm, affirm in part, or reverse the action, determination, or decision that is the subject of the appeal.
  - 2. When reviewing an appeal, the review authority may amend or adopt additional conditions of approval that may address other issues or concerns than the subject of the appeal.

3. When reviewing an appeal, the review authority may disapprove the land-use entitlement approved by the previous review authority, even though the appellant only requested a modification or elimination of one or more conditions of approval.
4. If new or different evidence is presented on appeal, the Commission or Council may, but shall not be required to, refer the matter back to the Director or Commission for further consideration.

### **17.640.035 Notice for Appeal Hearings**

- A. **Appeal of Commission's Decision.** Where an appeal of a Commission decision made following a public hearing noticed in compliance with Section 17.630.010, *Notice of Public Hearings and Administrative Review*, is filed with the City Clerk and a hearing on the merits of the appeal is placed in the Council agenda, notice shall be given in compliance with Section 17.630.010, unless the Council determines otherwise. An appeal of a Commission action that was not subject to a public notice does not require notice when the matter is placed in the Council agenda unless the Director determines otherwise.
- B. **Appeal of Director's Decision.** Notice of the appeal shall be mailed to all persons who previously received notice of the Director's decision at least 10 days before the scheduled public hearing or review.

### **17.640.040 Notice of Final Decision by Commission**

Within 10 working days after the final decision is rendered by the Commission, a notice of the decision and any applicable conditions of approval shall be mailed to the appellant at the address shown on the application. A copy of the notice shall also be sent in compliance with Section 17.630.040, *Mailing of the Notice of Decision*.

### **17.640.045 Pending Appeal**

While an appeal is pending, the establishment of any affected use or structure shall be held in abeyance and all permits and licenses issued for the use or structure shall be stayed.

Appeals

17.640

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## CHAPTER 17.650 ENFORCEMENT

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### Sections:

- 17.650.005 - Purpose
- 17.650.010 - Violations
- 17.650.015 - Remedies Not Exclusive
- 17.650.020 - Inspection
- 17.650.025 - Recovery of Costs

### 17.650.005 Purpose

This Chapter provides procedures that are intended to ensure compliance with the requirements of this Title and the conditions of a land-use permit approval.

### 17.650.010 Violations

- A. **Public Nuisance.** Any use, structure, or property that is altered, enlarged, erected, established, maintained, moved, or operated contrary to the provisions of this Title or any condition of approval, is hereby declared to be unlawful and a public nuisance and may be abated by the City through civil proceedings by means of a restraining order, preliminary or permanent injunction, or in any other manner provided by law for the abatement of such nuisances.
- B. **Stop Work Order.** Construction in violation of this Title or any condition imposed through this Title shall be subject to the issuance of a "Stop Work Order." A violation of a Stop Work Order shall constitute a misdemeanor.
- C. **Penalty.** Any violation of or failure to comply with the provisions of this Title shall be deemed to be a misdemeanor, and punishable as such, notwithstanding the fact that at the discretion of the City Attorney, the violation of any section of this Title may be prosecuted as an infraction. Each day a violation of any provision of this Title continues shall be a new and separate violation.

### 17.650.015 Remedies Not Exclusive

All remedies contained in this Title for the handling of violations or enforcement of the provisions of this Title are not mutually exclusive of any other applicable provisions of city, county, state, or federal law and do not prevent concurrent or consecutive methods being used to achieve compliance against continuing violations.

### 17.650.020 Inspection

Every owner and applicant seeking an approval or any other action through this Title shall allow authorized City officials, or their designees, reasonable access to any premises or property that is the subject of the approval or other action. Once an approval or other action has been granted in compliance with this Title, the owner or applicant shall allow authorized City officials, or their designees, access to the premises where there is reasonable cause to believe the premises or property is not in compliance with the approval or other action.

**17.650.025 Additional Permit Processing Fees**

Any person who establishes a land use, or alters, constructs, enlarges, erects, maintains, or moves a structure without first obtaining a permit required by this Title, or any condition imposed through this Title, shall pay the additional permit processing fees established by the most current City Council Fee Resolution for the correction of the violation before being granted a permit for a use or structure on the site.

## CHAPTER 17.660 REVOCATIONS AND MODIFICATIONS

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### Sections:

- 17.660.005 - Purpose
- 17.660.010 - Hearings and Notice
- 17.660.015 - Review Authority Action

### 17.660.005 Purpose

This Chapter provides procedures for securing revocation or modification of previously approved applications, permits, and entitlements.

### 17.660.010 Hearings and Notice

The appropriate regulatory authority shall hold a public hearing to determine if an application, permit, or entitlement granted in compliance with the provisions of this Title should be revoked or modified. Written notice shall be mailed (except for Temporary Use Permits) at least 20 days before the public hearing to the project applicant and/or property owner, as identified in the records of the Orange County Assessor, unless a more current source of this information is known.

### 17.660.015 Review Authority Action

- A. Authority to Initiate Permit Revocation or Modification.** A decision to initiate a revocation or modification of a land use permit or entitlement may be made by the Director, Planning Commission, or City Council.
- B. Permit Revocation or Modification.** A land use permit or entitlement may be revoked or modified by the review authority (e.g., Director, Commission, or Council) which is granted the decision authority as specified in Table 5-1, *Review Authority*, of this Title if any one of the following findings can be made:
  - 1. Circumstances under which the permit or entitlement was granted have been changed to a degree that one or more of the findings contained in the original permit can no longer be made in a positive manner and the public health, safety, and general welfare require the revocation of the permit.
  - 2. The permit or entitlement was issued, in whole or in part, on the basis of a misrepresentation or omission of a material statement(s) in the application or in the applicant's testimony presented during the public hearing for the permit or entitlement.
  - 3. One or more of the conditions of the permit have not been substantially fulfilled or have been violated.
  - 4. The use or structure for which the permit was granted has ceased to exist or has been suspended for at least one year.
  - 5. The improvement authorized in compliance with the permit is in violation of any code, law, ordinance, regulation, or statute.

6. The improvement/use allowed by the permit has become detrimental to the public health, safety, or general welfare, or the manner of operation constitutes or is creating a nuisance.